

Acquiring Real Estate with

TRANSIT GRANTS

The FTA's Newest Circular

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The Federal Transit Administration (FTA) recently issued its newest set of guidance for acquiring real estate using FTA grants. The goal of the new Circular, known as Circular 5010.1D, is to incorporate all legal provisions and assist transit grantees with the acquisition of real estate for their transit projects.

Effective as of November 1, 2008, the new "D" version of the FTA Circular 5010.1 guidance series is designed to facilitate a grantee's understanding of the guidance and make it easier to cross-reference information. It provides more detail and links significant aspects of the guidance directly to the regulations, 49 CFR Part 24.

Several of the changes will directly affect grantees acquiring real estate using FTA grant funds or those planning to incorporate land purchased with local funds into a Federal project at a later date. Therefore, it is critical that grantees become familiar with these changes.

Background

Like most agencies, the FTA provides a supplement to the Uniform Act regulations (49 CFR Part 24) through their circulars. The context of the FTA real estate program, as well as the issues it has encountered, work toward helping grantees understand the approach to the changes.

The FTA has identified real estate as a high risk area in its assessment of project feasibility. This is true because many transit grantees only acquire land intermittently and never fully develop expertise in the process. They may often attempt to acquire land without full knowledge of the practical aspects and requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA), and its implementing regulations found at 49 CFR Part 24.

Additionally, there may be either state/local laws or regulations that must be followed if the power of eminent domain will be used for the project. Significant project delays can often result from the failure to comply, especially if steps were not taken in a logical order, or if the schedule was overly ambitious. It can also result when the scope and cost of the project is not appropriately defined.

The changes to the Circular are outlined as follows:

Definitions — Chapter I, Section 5, Definitions, has been significantly expanded. There are 14 new terms and definitions that pertain directly to real estate related program elements, and two of the existing terms have been redefined.

Real Estate Technical Requirements — The changes to the real estate technical requirements are covered in Chapter IV, Project Management, Section 2, Real Property.

Prior Concurrence Requirements for Appraisals and Settlements — The 5010.1D changes affect the threshold level of valuation for pre-concurrence by the FTA. This will affect only a small number of parcels, but those affected are the higher value acquisitions. Therefore, appraisals of property with a value exceeding \$500,000 will need pre-approval by the FTA prior to extending an offer to the property owner. Since the previous level of pre-authorization was \$250,000, this revision will likely result in fewer appraisals requiring FTA pre-concurrence. As a result, FTA can focus its resources on the highest valued parcels, and benefit from a streamlined acquisition process for grantees.

In Chapter IV, Section 2d, Appraisal Concurrence Process, the new Circular clarifies that prior FTA concurrence of the appraised value is required when the grantee is proposing an in-kind contribution of any value. This would apply if the appraised value is used as

a credit toward the local matching share where the property had been previously owned by the grantee.

The threshold for prior approval of Administrative Settlements is unchanged. A proposed settlement that is greater than \$50,000 above the offered amount will still require FTA pre-concurrence to remain eligible for Federal participation.

Administrative Settlement — The new definitions clarify what is meant by various terms used in the text. For example, an “administrative settlement” is defined as “any settlement in excess of ... the approved just compensation ... [including] legal settlements.” Legal settlements are broadly defined as including all settlements “prior to a trial on the merits.” These definitions assure that FTA is clear in requiring support for any amount of money paid in excess of the approved appraisal.

Uneconomic Remnants — FTA added emphasis to the current requirement that agencies must offer to acquire uneconomic remnants, and that the offer must be a part of the initial written offer to the owner.

Appraisal Scope of Work and Realty/Personalty Report Requirements — The added emphasis on the appraisal process contained in the January 2005 49 CFR Part 24 is mirrored in the new Circular. Specifically, FTA now emphasizes a mutually established Appraisal Scope of Work (SOW) between the appraiser and transit agency. When appropriate, a realty/personalty report must be addressed in the SOW and be a part of the appraisal, if required. This means that, for complex acquisitions, a transit agency must formalize a SOW process with the appraiser and develop a process to reasonably categorize items located on the property as real estate (thus generally part of the appraisal) or personal property (thus handled by relocation assistance).

Since the mutual development of the SOW is a relatively new task, FTA provided additional guidance. The new 5010.1D now includes Appendix C, Guide for Preparing an Appraisal Scope of Work, which offers detailed direction and requirements.

Relocation Benefits Exceeding URA Limits — The FTA has clarified that it will not participate in costs incurred by a grantee which exceed Uniform Act limits, even though those costs may be required by state or local law. This means a grantee may be mandated by state law to pay certain costs, but those costs will not be reimbursed by FTA. For example, a grantee located in a state that mandates business reestablishment payments greater than \$10,000, or mandates payment of damages not generally considered compensable in eminent domain (e.g. business damages or goodwill), will pay those added costs with local funds.

FTA DSS Bedroom Criteria for Children — In several other subject areas, the FTA has taken its lead from the 49 CFR Part 24 requirements. An expanded discussion is included in the regulations, which elaborates on the requirement that replacement housing contain “separate bedrooms for children of opposite gender.” This Uniform Act regulatory requirement on this topic has had varying interpretations. The FTA clarified this requirement as intended for children over 12 years of age, unless local housing codes apply this standard at an earlier age.

FTA Alternative Procedures — FTA left intact the provision that permits more experienced grantees the option to request alternative procedures, although it did add some additional requirements. Specifically, a grantee must submit detailed information with an application for the alternative procedure. These alternate procedures permit a grantee to conduct a project with a different threshold for approval. For example, a grantee with many high valued parcels might ask the FTA to raise the pre-approval level for appraisals from the new \$500,000 level up to \$1 million. If FTA concurs with the grantee’s request, then pre-approval of a parcel valued at less than \$1 million is not required. FTA reviews all requests for alternate procedures on a case-by-case basis. An alternate threshold can also be requested for administrative settlements.

Real Estate Management Plan Requirements — FTA utilizes the Real Estate Management Plan (RAMP) document that requires a grantee to set out its real estate process and schedule. This planning document becomes part of the overall Project Management Plan. As the new Circular states, “the RAMP is a planning document for the acquiring agency and is a control document for FTA that includes real estate goals and methodology from the perspective of timing, staffing, statutory and policy issues.”

The RAMP requires a grantee to evaluate its capacity to perform the required real estate acquisition work in the time allocated. An appendix to the new 5010.1D provides a RAMP project model that assists in development and includes a thorough evaluation of potential land acquisition issues.

Prohibited Practices — Settlements that combine relocation and acquisition (sometimes termed a “global settlement”) are prohibited to the extent that the relocation payments are not specifically supported by actual cost documentation. This inclusion is essentially the same position discussed in the preamble of 49 CFR Part 24, when issued in 2005.

FTA also added a prohibition for the use of rent schedules, where such a schedule does not provide a replacement housing calculation based on actual available units. FTA requires the traditional calculation method set out in the CFR.

Circular 5010.1D Training

The FTA offers a two-day training class on FTA Real Estate Requirements that focuses on the new 5010 requirements. The class is free of charge to eligible transit grantees, and training is offered periodically in all FTA regions. For additional information on these courses, consult the National Transit Institute Website at www.ntionline.com/courses.

For additional FTA information on the new Circular 5010.1D, please contact Mamie Smith-Fisher at FTA Headquarters at (202)366-8063 or by email at Mamie.Smith-Fisher@FTA.dot.gov. The full text of the new Circular issuance is available at: www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf 📄

